



## COMMUNITY DEVELOPMENT DEPARTMENT

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### PLANNING COMMISSION MEETING MINUTES

#### REGULAR MEETING

FEBRUARY 11, 2003

PRESENT: Acevedo, Benich, Engles, Escobar, Lyle, Mueller

ABSENT: None

LATE: Weston, who arrived at 7:04 and was seated on the dias

STAFF: Planning Manager (PM) Rowe, Senior Engineer (SE) Creer, Associate Planner (AP) Tolentino, Senior Project Manager of Community Buildings (SPMCB) Dumas, Recreation Manager (RM) Spier, and Minutes Clerk Johnson

Chair Acevedo called the meeting to order at 7:00 p.m.

#### **DECLARATION OF POSTING OF AGENDA**

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

#### **OPPORTUNITY FOR PUBLIC COMMENT**

Chair Acevedo opened the public hearing.

Commissioner Benich made a statement regarding a possible future upgrade related to handicapped & disabled person requirements for Measure P projects applied to multi-family units, apartments and townhouses. He suggested more stringent requirements for bathroom tub/shower access, ramps, wider doorways and kitchen cooking/storage facilities.

With no one present wishing to address matters not appearing on the agenda, the public hearing was closed.

#### **MINUTES:**

**JANUARY 14,  
2003**

**COMMISSIONERS MUELLER/LYLE MOTIONED TO APPROVE THE  
JANUARY 14, 2003 MINUTES, WITH THE FOLLOWING AMENDMENTS:**

Page 2 paragraph 9 sentence 2: Reference page II-16, table II-14. Replace "residences just outside the City" with "affordable housing developed by non-RDA clients".

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Page 3 paragraph 6: Add before the last sentence "Many seniors, therefore, do not require the assistance that their income levels might otherwise indicate."

Bottom of Page 3: Add to the end of the sentence "to better assist the prioritization of funds." Add additional sentence stating, "The RDA also needs to reevaluate the dollar assistance requirements for downtown housing at the much higher densities now being projected for this area."

Page 5 paragraph 7: After "identify," correct to read "establishing the rules and compensation sources for properties located within the greenbelt."

**THE MOTION CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLER, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**JANUARY 28, 2003**     **COMMISSIONERS MUELLER/BENICH MOTIONED TO APPROVE THE JANUARY 28, 2003 MINUTES AS PREPARED. THE MOTION CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLER, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: ESCOBAR; ABSENT: NONE.**

### NEW BUSINESS:

*Having determined that a number of persons in the audience were present for item Chair Acevedo announced this item would be taken out of order.*

**5) GPA-02-09:** A City initiated amendment to the General Plan to change the following General  
**CITY OF M.H.** Plan designations: Amend 15 lots totaling 62.3 acres within the City's Sphere of  
**GENERAL** Influence that does not have a General Plan Designation to Rural County. (APNs  
**PLAN MAP** 779- 06-009 thru 022 and 779-18-001 thru 004); Amend a 1.45-acre lot from Single-  
**CORRECTIONS** Family Medium to Single-Family Low. (APN 773-08-012); Amend four lots totaling  
8 acres from Residential Estate to Single-Family Low. (APNs 773-08-013, 014, 015,  
016); Amend a 4.2-acre lot from Commercial to Light Industrial. (APN 726-35-003);  
Amend the Urban Growth Boundary to include a 4.4-acre lot. (APN 726-37-006);  
and Amend a 5.3 acre lot within the City's City Limit that does not have a  
General Designation to Industrial. (APN 817-05-022)

PM Rowe presented the staff report noting that staff has identified six sites on the General Plan Map that due to graphic errors, contain either incorrect General Plan Designations or are missing General Plan Designations. Positive action by the Commissioners at this meeting would correct those errors, he said. PM Rowe explained the varying discrepancies for the benefit of the audience, assuring that these corrections will not result in any detriment to property owners in the identified areas.

Commissioners pointed to various locales of the identified areas, noting that the General Plan Task Force may have inadvertently overlooked these proposed amendments being considered at this meeting. It was pointed out that some confusion might have arisen due to some properties being in PUDs and therefore seemingly the same, but unaffected by the proposed action tonight.

Chair Acevedo opened the public hearing.

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George Merlano, 330 Peebles Ave., said his property was dropped from the UGB and he has no objection to the inclusion back in the boundary.

Nancy M. Battel, 14040 Water Ave., San Martin, an owner in the property with Gary Prichard asked for clarification regarding the ramifications of the property being in the Williamson Act. She indicated that the County has said that the property can be used for a horse barn and related use, stating that she wants assurance from the City this will not be Interfered with; staff and Commissioners reiterated that the County controls designations in this area.

Responding to a question from Ms. Battel, Commissioner Mueller explained that the area(s) under consideration are not identified for any changes. PM Rowe joined the discussion providing explanation that the designation identified shows the County's influence over the property, and again reiterating that there will be no changes from tonight's actions.

Robert Straight, 705 Spring Hill Dr., asked what would specifically happen in Area 3 noted in the staff report. Commissioner Mueller explained zoning in the area.

Mr. Straight asked about homes in the area. Commissioner Mueller responded that this action will have no connection to uses in the area specifically. PM Rowe then explained the overall development plan for the areas under discussion, noting that the development plan has been set by the vote of the City Council.

Noting that there were no others wishing to speak to the matter, the public hearing was closed.

**COMMISSIONERS MUELLER/WESTON OFFERED RESOLUTION NO. 03-12, APPROVING GENERAL PLAN AMENDMENTS TO SIX SITES THAT DUE TO GRAPHIC ERRORS TO THE GENERAL PLAN MAP CONTAINED INCORRECT OR MISSING GENERAL PLAN DESIGNATIONS. THE MOTION CARRIED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT.**

**1) ZA-02-11/  
SD-02-08:  
SHAFFER-  
BAMDAD** A request for approval of a precise development plan and residential subdivision of a 15-unit single-family project on an 8.583-acre site. The project site is located west of Hill Rd., at the terminus of Shafer Ave. and Katybeth Way, north of Conte Way in an R-1 (12,000)/RPD zoning district.

AP Tolentino presented the staff report stating that the project was awarded seven building allotments for FY 2003-04 and eight allotments for FY 2004-05. She informed that the project development agreement was adopted by the City Council in January 2003. Turning to the environmental assessment, AP Tolentino said two areas of concern remain: air quality and biological resources, specifically regarding five existing trees: one California black walnut and four oaks. Based on a project arborist report, the black walnut was determined to be in very good condition, but two of the oaks are in poor condition and the remaining two are dead. Consequently, AP Tolentino said, staff recommended that the California black walnut be retained and the four oaks be removed and replaced in kind. Measures were included in the Mitigated Negative Declaration to reduce potential air quality and biological resource impacts to a less than significant level.

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Concluding the staff report, AP Tolentino called attention to recommend changes in proposed Resolution No. 03-04 as follows: Section 5: Any ~~future~~ development or building additions within this RPD shall be subject to compliance with the R-1 (12,000) site development standards; and Resolution No. 03-05 (condition E.8): A note shall be placed on the final map which shall indicate that *the 42,693-sf Park/Open Space* lot(s) \_\_\_\_\_ shall be used for no other purpose than...

Commissioner Mueller suggested that a section be added to the Mitigated Negative Declaration limiting the time and days construction work occurs. He said this is an area of high residential use and that limiting the time of construction will stabilize neighborhood relations. Continuing, Commissioner Mueller called attention to the number of large animals (horses) in the area, asking about building setback requirements between dwellings and horse corals. Discussion ensued among the Commissioners regarding whether or not this may constitute a health and safety issue. Commissioner Escobar said it is important to minimize the impact on existing residences, continuing that he is concerned with adjacent lot protection. AP Tolentino said the code requires a 100 ft. separation between corrals and dwellings, and it is the responsibility of the livestock owner to maintain that separation. Commissioner Mueller said it is important to make sure the development does not interfere with current area uses. AP Tolentino was directed by Chair Acevedo to check on the separation requirements.

Commissioner Weston visited the issue of Measure P points for the oaks. He visited the site and described the oak trees not worthy of either points or retention. Commissioner Weston suggested that the staff recommendation of replacing the trees in kind is not strong enough. He said that he had visited a nursery and found that doubling the size of the tree(s) recommended would be more proper. Commissioner Weston indicated displeasure that trees in poor condition were awarded points under Measure P.

Commissioner Benich said that because there are large animals in close proximity, the project manager (real estate sales) should be required to tell prospective buyers of those animals and related concerns (noise, odors, etc.), which may occur. "This may well save some headaches down the road," Commissioner Benich commented.

Chair Acevedo opened the public hearing.

Vince Burgos, 352 So. Eagle Nest Ln., Blackhawk, project architect, spoke to the Commissioners. He said he has gone through the development standards and conditions with the applicant and can meet those. He said he had no comment on the issues raised regarding a check on construction times during operation of the project. Mr. Burgos indicated that the project has been designed with very large setbacks on those lots which are adjacent to properties where there are horses.

Rafi Bamdad, applicant, conferred with the Commissioners, saying that when he first purchased the property and received the allocations, he checked with Planning Department staff and determined that 25-foot rear setbacks were required.

George Shebib, 1940 Morgan Ct., indicated on the displayed map where structures are located and animals owned on surrounding properties in relationship to the location of the project. Mr. Shebib said he was concerned with the implications for his property, discussing with the applicant the size, location, and placement of dwellings in the project. He particularly questioned location of two-story housing, saying it will obstruct his views and 'will degrade

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my property' if placed as intended. Mr. Bamdad approached the podium, indicating a willingness to work with neighboring property owners.

Interest in the location of the existing and proposed fencing was expressed by the Commissioners.

In response to a question by Mr. Shebib, Commissioner Mueller explained that project plans can be viewed at the Planning Department.

With no others indicating an interest in addressing the issue, the public hearing was closed.

Commissioner Lyle observed that, contrary to statements made by the applicant, Measure P does not require two-story housing.

Commissioner Weston again initiated discussion of the tree removal/replacement as indicated in the staff report. He said the 'trade' suggested is not equal, again suggesting that larger trees – at an increased cost to the applicant – be considered. Commissioner Lyle indicated agreement with Commissioner Weston's assessment of the issue. Commissioner Weston continued, expressing concern as to how the points were originally awarded for the trees on the property, saying this matter (points for oak trees) 'deserves serious consideration in future Measure P application cycles'.

**COMMISSIONERS MUELLER/ESCOBAR MOTIONED APPROVAL OF THE MITIGATED NEGATIVE DECLARATION, INCLUDING THE ADDITION OF A CONDITION IN SECTION 4 WHICH LIMITS THE HOURS OF CONSTRUCTION. THE MOTION PASSED WITH FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE**

**COMMISSIONERS MUELLER/ESCOBAR OFFERED RESOLUTION NO. 03-04, WITH THE INCLUSION OF THE LANGUAGE CHANGE RECOMMENDED BY STAFF AND AMENDMENT TO SECTION 5 REQUIRING THE APPLICANT TO SEPARATE THE PROPOSED UNITS FROM THE ACRE-LOTS TO THE NORTH, TO THE MAXIMUM EXTENT POSSIBLE UNDER THE PROVISIONS OF THE CODE. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**COMMISSIONERS MUELLER/ESCOBAR OFFERED RESOLUTION NO. 03-05, AS AMENDED BY STAFF, WITH THE FOLLOWING MODIFICATIONS: 1) THE INCLUSION OF STANDARD CONDITIONS D3 AND E9; 2) REVISION TO CONDITION X.2 TO REQUIRE FOUR, 48-INCH BOX REPLACEMENT OAKS; AND 3) ADDITION OF CONDITION X.16 REQUIRING THE PROJECT MANAGER (REAL ESTATE SALES) TO TELL PROSPECTIVE BUYERS OF THE EXISTING ANIMALS ON THE ACRE-LOTS TO THE NORTH AND THE RELATED CONCERNS (NOISE, ODORS, ETC.) ASSOCIATED WITH THESE USES. THE MOTION PASSED WITH FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

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**2) ZA-02-18:  
COCHRANE-  
IN-N-OUT  
BURGER/  
APPLEBEE'S**

A request for approval to amend the precise development plan for the Planned Unit Development located at the NW quadrant of Cochrane Rd and Hwy 101 to allow for a 3,253 sf. drive-thru fast food restaurant and a 5,096-sf sit-down restaurant on a 2.49-acre site.

AP Tolentino presented the staff report, noting that on May 10, 2000 the City Council approved a zoning amendment application to rezone the northwest quadrant of Cochrane Road and Highway 101 from Highway Commercial to PUD and to establish a precise development plan for the site. The site is built out, she said, with the exception of the two restaurant pads. Because this site is a gateway to the City, the General Plan requires development of the site to be attractive and identifiable, and to enhance the visual integrity of the gateway. Staff do not feel that a fast-food use as proposed, particularly with a drive-thru component, is appropriate for or enhances the visual integrity of a gateway location.

AP Tolentino also explained that the proposed site, landscape and architectural plans are inconsistent with the Tharaldson PUD guidelines and City-wide PUD standards. AP Tolentino also identified recommendations of staff which would enhance the site.

Commissioners asked AP Tolentino to clarify several items including:

- the location of outdoor dining adjacent to the drive-thru at the fast-food restaurant
- the response/reactions of the Architectural Review Board to the project
- heights of the buildings and potential lowering of the towers
- landscaping plans
- encroachment of landscaping into the CalTrans right-of-way
- possibly moving the buildings to the south
- relocating the buildings closer to the off-ramp
- neon lighting on both the buildings
- adverse visual image concerns
- outdoor seating coverings
- height of the monument sign
- long-term maintenance of landscaping if permitted in the CalTrans right-of-way

AP Tolentino responded, joined in several instances by PM Rowe, who offered several clarifications, particularly dealing with the landscape encroachment issues.

Chair Acevedo opened the public hearing.

Ron Volle, 13502 Hamburger Ln., Baldwin Park, In-N-Out Burger's northern California real estate manager, addressed the Commission, saying he had previously been before the Commission, and believes this is a good plan. He spoke of the efforts for In-N-Out Burger to partner with a reputable restaurant business on the site, while providing an overview of the history of the In-N-Out Burger business, its' growth, the company's reputation, the community involvement/assistance of the restaurants in various locations. Mr. Volle said the location under discussion needs 'a shot in the arm', indicating that In-N-Out Burger and Applebee's could do much to enhance the space. Differing with several of the staff recommendations, Mr. Volle offered alternatives which he said would improve the proposal In-N-Out Burger had given to the City. He strongly urged the Commissioners to leave the buildings at the locations proposed and to minimize the landscaping area. Mr. Volle concluded his remarks by saying his company, In-N-Out Burger, is an exemplary business

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with a great reputation and having In-N-Out Burger at that location in Morgan Hill will benefit the City.

Ron Caselli, 742 Bicknell, Los Gatos, introduced himself as owner of several Applebee's in the Bay area, clarified to the Commissioners the reactions of the ARB to the proposal. Mr. Caselli stated that he intended to go ahead with the project, but insisted that the restaurant be built to the rear of the location, sharing parking with an adjacent hotel for employee parking, that the towers of the restaurant not be lowered, and that the neon lights on the building be retained. He also indicated that the requirement of the City for the trees in landscaping is contrary to good business practice for a restaurant, where low, slow-growing trees enhance the visibility of the restaurant to potential customers. Mr. Caselli said it was his intention to ask for a waiver of City fees, claiming that Morgan Hill fees are 'ten times' higher than comparable cities. He indicated chafing at the \$35,000 per year road assessment levied by the City. "If the City wants a sit-down restaurant, they must have In-N-Out Burger – the two are linked," Mr. Caselli said. "I'm interested, but the City must 'cut a deal'."

Commissioner Lyle asked about the employee parking proposal. Mr. Caselli said that there is a reciprocal parking agreement with the hotel next door. He stated there is no limit to the cars to be parked and that the maximum he projected for employee parking would be 30 cars per night.

Commissioner Weston asked clarification on Mr. Caselli's statement: If the City wants a sit-down restaurant, they must have In-N-Out Burger – the two are linked. Mr. Caselli replied, "If In-N-Out Burger is not approved, Applebee's is out."

Commissioners held discussion with the applicants regarding the following issues:

- the u-turn required on Madrone Parkway near the gas station
- the desire/need to screen the gas pumps
- parking/traffic patterns in the restaurant(s) lots
- general policy of the City to locate buildings at the front of lots and retain parking in the rear
- placement of berms as part of the landscaping

With no others indicating a wish to address the matter in open session, the public hearing was closed.

Commissioner Weston commented that the item was started by the prior owner, and now the Planning Commission 'is left with the duty of trying to make it work'. He stated that he believes there is a 'reasonable expectation that the site won't work'. "It appears to be a tough site to develop," Commissioner Weston commented. "This would be the first building travelers see as the Gateway to the City. I'm not totally enamored at seeing a hamburger place at this site. I'm impressed with the In-N-Out Burger company and their community involvement, but not at this location."

Commissioner Benich disagreed, saying this is a major highway intersection, and that he doesn't think of it as a 'gateway'. Commissioner Benich indicated he believes the applicants have taken good care to provide what the City wants and needs.

Noting the presence of SE Creer, Commissioner Lyle turned the question to that of the traffic

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patterns, both on the site and in the area. The applicants expressed their desire for a right-turn in/right-turn out driveway to the site. PM Rowe said staff believes this would be unsafe. SE Creer agreed, saying the location is too near the intersection. SE Creer continued, citing the myriad of traffic issues and problems in the proposed development area.

Commissioner Lyle said that he had been leaning toward a 'yes' vote for the requests, but given the testimony tonight, had been swayed to a 'no' vote at the present. He stated that he believes the recommendations of staff to be valid and good.

Commissioner Mueller spoke on the cross-easement parking, stating he believes that is good and should have been considered from the first. He further stated that many of the customers for the sit-down restaurant will come from the hotels and consequently the location of the building would be good. He, too, questioned the proposed right-turn in and right-turn out to the site. Responding to Commissioner Mueller's questions, SE Creer spoke in depth of the difficulties of the traffic patterns in the area and at the site. Commissioner Mueller said, "If we go ahead now, we (the Planning Commission) need to give the City Council a good plan."

*Commissioner Weston was excused at 9:16 p.m.*

Jason Pack, 255 M. Market Street, #200, San Jose, of Fehr and Peers Transportation Consultants, was asked to explain the recommendations of the traffic study. Mr. Pack complied.

Commissioner Lyle commented that Morgan Hill is filled with intersections that have bad traffic circulation and said that he did not wish to compound the problems.

Commissioner Engles remarked that 'anything going in there' must address the issues being raised. He alluded to past practice issues that cause problems now and said that he believes that the traffic problems have solutions.

Commissioner Escobar said that the Planning Commission is trying to retroactively fix the problems. He said it may be a case of trying to do too much at this site. He noticed that one applicant is trying to do everything to work with the City while the other applicant has assumed a 'take it or leave it' attitude. "Would we be better to return to our original recommendation to the City Council?" he questioned, asking if only the In-N-Out Burger would be the best choice for the site. Commissioner Escobar continued, speaking of the landscaping issues. "Maybe," he said, "we're asking too much of the site." Commissioner Escobar said it is essential to look at a really viable use for the site.

Commissioner Engles remarked that he thinks the applicants have done a 'yeoman's job'.

Commissioner Escobar said a plan must be good for both sides to work. He indicated he was not sure this is the case in this discussion. In reality, he said, we are talking about two sit-down restaurants here. He wondered if one establishment by itself might not be better, but considered that the traffic issues would still be problematic.

Chair Acevedo asked about the viability of angle parking within the site.

SE Creer said that option afforded a 'quick and easy solution but enforcement would be difficult'. Continued discussion ensued regarding the traffic patterns, difficulties and issues.

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Commissioner Lyle said his concerns are parking, landscaping, and traffic.

Commissioner Escobar asked about moving the Applebee's Restaurant to the front of the lot. Mr. Caselli indicated this would not be acceptable.

Commissioner Mueller asked questions regarding parking in front of Applebee's, suggesting that the building design might be moved forward, 'flipped 180°' so the restaurant would be facing the hotels, leaving enough space for employee parking, and resulting in more parking for customers at the front of the building. Mr. Caselli countered by listing problems of visual impact, delivery truck space required, and the potential 'big block' visibility of In-N-Out Burger.

Commissioner Escobar said the Commissioners have the opportunity to 'do something with the properties'. We want to make it work, he said. The need for mitigation has been identified.

Chair Acevedo returned to question the issue of right-in and right-out turns only. He suggested an alternative traffic plan for west of the Chevron. He suggested that the Commissions suggestions of moving the locations of the buildings may well be hurtful, as well as helpful.

Commissioner Lyle said he would like to see things happen, but the Commissioners were being asked to work too much on faith. Concurring with staff concerns regarding landscaping, parking, traffic, and the perceived unwillingness of at least one of the applicants to bend a little, Commissioner Lyle suggested that the Commissioners may be 'trying to fix a pig in a poke'.

Commissioner Mueller said that there is a need to decide if the proposal can work. He suggested the matter be returned in two weeks with the identified issues (landscaping, parking, traffic) resolved. Commissioner Mueller said it is important to give staff input to develop findings in what the City is trying to accomplish.

Commissioner Lyle requested that the Applebee's representative clarify to staff the demands stated this evening, such as waiver of fees.

Commissioner Escobar commented. "If six members of the Commission voted 'yes' to the initial request by In-N-Out Burger, it is incumbent upon us to give the City Council information they can't disagree with." He expressed a belief that a two-week period for study would give time for good data for the Commission to forward to the Council.

Commissioners jointly discussed the landscaping and visual screening plans of the applicant and the ideas presented by staff.

PM Rowe explained the requirements of the PUD established for the site.

In-N-Out Burger proponents said they were frustrated by 'the staff nit-picking the site plans to death'.

Commissioner Lyle opined the staff and Commissioners' recommendations for visual

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screening. He commented that if Applebee's were located to the rear of the lot, the screen issues remain.

In-N-Out Burger's representative spoke on the (potential) achievement of the two restaurants in terms of customer sales and long term success. Mr. Volle assured that moving the two restaurants to the front of the lot would not work well.

Commissioner Escobar said it is ironic that 15 – 16 gas pumps are dictating the use of two acres within the City. "Perhaps it is time to 'bite the bullet'," he said, "admit that the first design was ill conceived and go forward."

Commissioner Mueller said that if the two restaurants are left at the rear of the property, it is important to do 'something' with the landscaping.

Chair Acevedo said it appears that there are only a couple of issues not yet resolved – traffic/parking and the landscaping.

Commissioner Lyle responded that many of the staff recommendations have not yet been considered.

Mr. Coselli said that the site is commercially zoned and any good business would want visibility. But, he continued, the City wants to hide development. "You can stall development for ten more years or you can fix it today," Mr. Coselli said.

Chair Acevedo expressed interest in landscaping to the west of the proposed development to aid in screening of the gas pumps.

PM Rowe explained the requirement of the Municipal Code dealing with the number of trees for a set number of parking spaces.

Commissioner Escobar said a good point had been made with PM Rowe's explanation. He continued by saying that if moving the buildings to the front of the site presents too many obstacles, then the City may have to 'bite the bullet' and plan berming landscaping. "Still," Commissioner Escobar said, 'the dominate view of the site will be parking lots.

Commissioner Engles gave a history of the site and its' related problems. "Mistakes happen," he said, "we're all human. I don't know why the current applicants must solve the problems."

Commissioner Lyle said the 'open items' include circulation, screening, parking. "The other stuff I trust the ARB to do," Commissioner Lyle said. Continuing, he added signage to his list of concerns.

Chair Acevedo indicated that there may be merit to having a subcommittee of the Planning Commission work with the staff and the applicants to 'iron out' the issues. He suggested that circulation may be a primary focus of such a subcommittee.

Commissioner Engles conducted a 'straw vote' of sending the matter forward to the City Council with the Council and the applicants solving the identified issues. Those in favor of this action were Engles, Benich and Acevedo.

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Commissioner Escobar said he is in favor of the concept, but wants the City Council to receive the proposal with the issues resolved; and he said that it is up to the Commissioners to produce that proposal.

PM Rowe reminded that regarding the circulation issues, the applicants have asked for traffic fee concessions.

SE Creer commented that a number of unsolved issues have been raised regarding traffic, parking and landscaping.

PM Rowe said that if it is the Commissioner's wish to have the matter returned in two weeks, staff will address and respond to each of the issues raised. PM Rowe said it is the wish of the City Council to receive comments from the Commissioners as they recommend solution to the Council. "Now," he said, "there are too many items left open to send the matter to the Council." PM Rowe reiterated the issues which have been identified and need to be reported to the Commissioners by the staff:

- landscaping
- traffic and parking issues
- visual screening of the gas pumps

Commissioners Escobar and Lyle said that someone is needed to mediate meetings/discussions between the applicant and staff, indicating that the subcommittee of the Planning Commission may be beneficial.

PM Rowe said that may be a good plan.

Commissioner Mueller again recommended taking two weeks to 'iron out the details' saying that there is too much open to send the matter forward to the Council.

Chair Acevedo introduced a motion indicating that the Planning Commissioners agree in concept to the In-N-Out Burger and Applebee's site plans, and noting that the Commissioners will work with staff and the applicants to achieve a favorable resolution.

Commissioner Mueller said that there is effort currently to work through the issues. He stated strong belief that the two weeks discussed would achieve this. Commissioner Mueller reminded that all parties are working to achieve the best solution but the Commissioners have a duty to state reasons if there is intent to change the PUD.

Chair Acevedo withdrew the motion.

In-N-Out Burger representative, Mr. Volle, indicated a willingness to do necessary negotiations to achieve resolution, but indicated that the buildings can't be moved.

Commissioner Lyle suggested that if a subcommittee is formed as suggested, it include a representative of the ARB.

Chair Acevedo and Commissioner Mueller disagreed with that notion, saying that the ARB has a different focus and does not deal with the currently identified issues.

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PM Rowe reminded that many things that are required for compliance may require changes in the Municipal Code if agreed to. All present indicated this might be lengthy process.

**CHAIR ACEVEDO MOVED TO CONTINUE THE MATTER TO THE FEBRUARY 25, 2003 MEETING, ESTABLISH A SUBCOMMITTEE TO MEDIATE THE STAFF RECOMMENDATIONS AND THE APPLICANT'S REQUIREMENTS; AND THAT STAFF RETURN WITH A PROPOSAL, WITH FINDINGS AS NECESSARY, TO SEND THE MATTER TO THE CITY COUNCIL IN A POSITIVE MANNER. COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.**

In light of the agreed to subcommittee, Commissioners Acevedo, Escobar and Mueller volunteered to sit on the subcommittee.

PM Rowe reiterated the issues identified for study:

- turn lanes
- islands
- parking
- circulation
- landscaping
- screening of pumps
- concerns of the ARB regarding design
- possible amendment of the municipal code

To that list, Commissioner Lyle added: items on the staff list and others to be determined by the Subcommittee.

Commissioner Escobar said it is important to remember that the Commissioners are trying to deliver a workable product to the City Council and asked all concerned to move forward exhibiting an openness and willingness to work.

**3) UP-02-12:** A request for approval to allow for an approximate 3,253-sf drive-thru fast food facility to be located at the NW quadrant of Cochrane Rd and Hwy 101.

**COCHRANE-  
IN-N-OUT**

**BURGER/  
APPLEBEE'S**

**COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO CONTINUE THE MATTER TO THE FEBRUARY 25, 2003 MEETING. THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.**

**4) GPA-02-05/** Applications have been filed to include an 8.75 acre parcel located on the southeast corner of the intersection of Barrett Ave. and Condit Rd., within the Urban Service Area  
**USA-02-03/** boundary City Limits of the City of Morgan Hill. The General Plan land use designation  
**ANX-02-03/** is proposed to be changed from the current designation of Rural County to Public Facility.  
**ZA-02-14:** The zoning designation is proposed to be changed from County A-20A to City zoning  
**CITY OF M.H./** designation PF, Public Facility.  
**CONDIT-**

**LOMANTO/**

**AQUATIC  
COMPLEX**

PM Rowe presented the staff report, noting there are multiple phases to the project. He provided an overview of the phases and uses for the site. He reminded that two weeks ago the

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expanded initial study had been given to the Commissioners and the project was ranked as a 'number one priority by the City Council'. PM Rowe described the location as 'ideal' for the facility, noting that the property is not feasible for residential development.

Rowe pointed out the future policy change, which figures prominently in the project funding of signalization. The funding of traffic signals, he said, depends on the level of service at the intersections.

PM Rowe introduced Jim Dumas, Senior Project Manager of Community Buildings (SPMCB) for the City of Morgan Hill and indicated that Julie Spier, City Recreation Manager (RM), was present as well.

Commissioner Escobar asked for explanation of the zoning (public facilities) which PM Rowe provided.

Commissioner Benich asked for clarification on the term 'prezoning'. PM Rowe explained that the proposed zoning becomes effective only upon annexation to the City. Commissioner Mueller joined the discussion by explaining that this zoning is 'conditional'. "If there is subsequent action (annexation), then the zoning becomes permanent," he said.

Commissioner Lyle said he has some issues and problems with the Initial Study.

Commissioner Lyle continued that he is in favor of almost all of the project and that he had communicated to staff those issues which continue to concern him, including the discussion at the City Council meeting regarding increasing the lap lanes and installation of additional slides. Commissioner Lyle also questioned the numbers presented for potential attendance, stating they may be ~~artificially~~ low due to project growth and comparison numbers being taken from an October study.

Jason Pack, 255 M. Market Street, #200, San Jose, of Fehr and Peers Transportation Consultants, explained the recommendations of the traffic study and provided an overview of how the recommendations and determinations were reached. He responded to several questions regarding the traffic study comparisons and specific detail raised by the Commissioners. Joining in the discussion centering around the levels of service at the intersections was Sue DeBorde, an engineer with Fehr and Peers Transportation Consultants. Both explained that there are limited comparisons for traffic analysis in Northern California, noting that the Aquatic Center in Roseville, CA was primarily the basis for information.

Commissioners noted the parking issues which may be compounded by building the Center adjacent to the Soccer complex.

Commissioner Lyle led discussion on the visual impacts and open space of potential housing developments in the area.

PM Rowe said that the adjoining property is zoned rural by the County; consequently, the Commissioners can't address mitigation measures until the future use for the area is known, he said.

Judy Shanley, Senior Environmental Specialist with David J. Powers & Associates, Inc. 1885

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The Alameda, Suite 204, San Jose, reminded that an EIR typically doesn't speculate on potential mitigation measures.

Questions were raised regarding the impact of starter's guns and the loud speaker system.

Ms. Shanley and Chair Acevedo discussed the various equipment used at swim/dive meets, the frequency and pitch of the noise impacts of the equipment, and proximity of the site to the freeway.

Commissioner Lyle questioned the recommendation of the landscape buffer, noting with Commissioner Mueller's concurrence that this proposal indicates a different requirement than that for private developers. Both expressed concern that this difference may be perceived as a favoritism for the City projects.

The issue of the increased height of the diving tower(s) and lighting was discussed.

Commissioner Escobar pointed out that the initial study indicated insufficient parking for the area at the time of competitive meets, recommending a shuttle from other locations. He asked where such sites may be located and advocated any adverse conditions to those sites be identified.

Commissioner Mueller said there is a need for parking mitigation before the plan proceeds.

Ms. Shanley said the initial study doesn't address event concurrent noise. She said there have been no issues identified in the land use compatibility with noise issues.

Commissioner Escobar asked about numbers of employees (relating to parking issues) and food concessions.

RM Spier said there would be portable type concessions. Responding to further questions, RM Spier said the logistics of the concessions would be worked out.

Commissioner Escobar brought up concerns of waste disposal.

Commissioner Lyle asked about the height of the fence in relation to garbage generated on the site.

SPMCB Dumas said the requirement is for a six-foot fence. He continued by telling Commissioners that the City is trying to look at operational alternatives for waste disposal, including recycling.

Commissioner Escobar asked about the organization of employment. RM Spier said there would be two or three full time employees with perhaps 40 seasonal employees. Commissioner Escobar continued, asking about the fee structure which has been discussed at the City Council meeting last week, indicating the Commissioners had not received this data. RM Spier said it will be sent to Commissioners.

Commissioner Benich expressed concern that there is no mention of public art in the report.

Ms. Shanley said there had not been a request for inclusion of a study of the feasibility of

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public art.

Commissioner Benich said this is a natural project for public art and that credit should be taken for including it in the appropriate sections of the report.

Chair Acevedo explained that there is a concurrent study being conducted relating to public art.

Commissioner Mueller asked for explanation of the permanent grandstand designed to seat 2,500 and the temporary grandstand for 750 persons. He also raised the issue of restroom facilities. SPMCB Dumas explained the rationale of the grandstand numbers and pointed out the proposed locations for facilities.

Commissioner Benich said he felt the parking and traffic circulation issues have not been properly addressed, including funding for the proposed parking lot shuttles.

Commissioner Lyle asked when the traffic signal study would be done.

SE Creer responded that the studies are now being worked on and there should be another signal warrant study in 'a year or two'.

Commissioner Mueller turned attention to lighting, fire/police support for medical emergencies.

SPMCB Dumas said there is a small health room planned for the facility.

Chair Acevedo opened the public hearing.

There were no persons indicating a wish to speak to the matter; consequently, the public hearing was closed.

Commissioner Lyle said there is a need to add items to the Negative Declaration, such as the parking area and the items raised by the Commissioners, for example, the shuttle, the emergency personnel and so forth.

PM Rowe said the following would receive additional attention:

- the parking management plan, including the shuttle-related issues
- frontage landscaping
- public art
- lighting intensity, including selective adjustment(s)
- set-back issues (he took the opportunity to explain City code requirements)
- noise impacts during competitive meets
- discussion of LOS D+ definition

Commissioner Mueller continued to express concern regarding the set-back issues, saying, "If we don't enforce the rules on ourselves, how can we enforce on others?"

Commissioner Benich agreed with Commissioner Mueller, but suggested that selective enforcement may be for the "public good" on a case-by-case basis, as in this public project for an Aquatics Center.

**COMMISSIONERS MUELLER/BENICH MOVED FOR THE ADOPTION OF THE MITIGATED NEGATIVE DECLARATION, DIRECTING STAFF TO INCLUDE COMMENTS ON THE INTERSECTION OF DUNNE AND MURPHY, LANDSCAPING BUFFER REQUIREMENTS OF THE ADJOINING PLANNED UNIT DEVELOPMENT, CONDUCTION OF A NOISE STUDY RELATING TO THE LOUD SPEAKER SYSTEM, LIGHTING SYSTEM REQUIREMENTS, AND A PARKING MANAGEMENT PLAN. THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.**

**COMMISSIONERS MUELLER/ACEVEDO OFFERED RESOLUTION NO. 03-08, RECOMMENDING CITY COUNCIL APPROVAL OF A CHANGE IN LAND USE DESIGNATION TO PUBLIC FACILITY. THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.**

**COMMISSIONERS MUELLER/ESCOBAR OFFERED RESOLUTION NO. 03-09, RECOMMENDING CITY COUNCIL APPROVAL OF AN AMENDMENT TO THE URBAN SERVICE AREA BOUNDARY. THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.**

**COMMISSIONERS MUELLER/ACEVEDO OFFERED RESOLUTION NO. 03-10, RECOMMENDING CITY COUNCIL APPROVAL OF A CHANGE IN LAND USE DESIGNATION TO PUBLIC FACILITY. THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.**

**COMMISSIONERS MUELLER/ACEVEDO OFFERED RESOLUTION NO. 03-11, RECOMMENDING CITY COUNCIL APPROVAL OF ANNEXATION TO THE CITY OF MORGAN HILL. THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.**

**6) FINAL SCHEDULE** Approve final schedule for review of residential projects in the Open/Market Rate Affordable and Micro Measure P competitions.

PM Rowe called attention to dates proposed for the final schedule for review of project applications for the upcoming Residential Development Control System (Measure P) open/market rate, affordable and micro Measure P competitions.

Having discussed this matter previously, **COMMISSIONERS ESCOBAR/MUELLER MOTIONED TO APPROVE THE SCHEDULE AS PRESENTED. THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.**

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**ANNOUNCEMENTS:**

PM Rowe told Commissioners that the Preliminary EIR for the Institute of Mathematics Golf Course, presented at the last meeting, had a conflicting date for review by the Commissioners and the comment period for the public. To escalate the efficiency of the process, PM Rowe told Commissioners that there will be a joint workshop with the City Council on Wednesday March 5, 2003 for discussion of the project. Time of the workshop to be announced

At the February 5, 2003 City Council meeting, the Council voted to accept the Planning Commission recommendation for appointment of Commissioners Engles and Mueller to the Urban Limit Line Committee.

Regarding Commissioners attendance at the Planner's Institute in San Diego, PM Rowe encouraged the Commissioners to attend, saying the City will pay the registration fees.

**ADJOURNMENT:** There being no further business, Chair Acevedo adjourned the meeting at 12:09 a.m.

**MINUTES RECORDED AND PREPARED BY:**

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**JUDI H. JOHNSON, Minutes Clerk**